

DEPARTMENT of the INTERIOR

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SUPREME COURT UPHOLDS GOVERNMENT BAN ON SALE OF BIRD FEATHERS

A recent Supreme Court ruling upholding the Government's right to ban all commercial dealings in migratory bird feathers will allow Federal wildlife officials to continue fair and judicious protection efforts for eagles and other migratory birds, according to the Interior Department's U.S. Fish and Wildlife Service.

"The sale of migratory bird feathers creates a demand for more feathers, which ultimately leads to the killing of more protected birds to satisfy that demand," according to Assistant Secretary Robert Herbst. "The Supreme Court's ruling will help to discourage people from deliberately killing birds for the purpose of selling their feathers or other parts."

In past years, killing of birds for their feathers was a serious threat to some species. Feathers have been used in hats, ties, jewelry, "paintings," and other items. Feathers and talons of bald and golden eagles are particularly valued by collectors of Indian artifacts. Indian religious practitioners are allowed to use the parts of bald and golden eagles under permit from the Fish and Wildlife Service.

The Supreme Court case centered on the question of whether two bird conservation laws, the Eagle Protection Act and the Migratory Bird Treaty Act, prohibit commerce in protected birds and bird parts that were lawfully obtained before the two laws took effect. The two Acts prohibit commerce in protected birds, including their feathers and other parts, regardless of when the items were acquired. Herbst pointed out that there is no effective way to distinguish the age of feathers to determine whether the birds were killed before or after the two laws were enacted.

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Seven dealers in Indian artifacts filed suit against the Department in 1975 claiming that the laws were not intended to apply to bird parts in artifacts that existed before the acts took effect. They also argued that the Acts and the Department's regulations violated the Fifth Amendment's protection against Government "taking" of an individual's property without just compensation. The case reached the Supreme Court on a Government appeal after a three-judge Federal panel in Colorado ruled in favor of the artifacts dealers.

The Supreme Court's unanimous ruling on November 27 held that the ban on commerce in pre-Act bird parts was consistent with the language and legislative history of the two conservation laws. The Court also held that the "simple prohibition of the sale of lawfully acquired property does not effect a 'taking' in violation of the Fifth Amendment. The challenged regulations do not compel the surrender of the artifacts in question, and there is no physical invasion or restraint upon them."

Herbst said that Fish and Wildlife Service protective efforts for eagles and other migratory birds would have been hampered if the Supreme Court had ruled in favor of the artifacts dealers.

"It is often difficult to catch a person who has killed a protected bird because of lack of witnesses or evidence," Herbst said. "Often the break in the case comes when someone tries to market products made from the protected species. In addition, if you can dry up the market for products made from protected species, you can reduce the demand for killing more birds."

In past years, Herbst said, Service law enforcement agents have investigated a number of cases involving the sale of large quantities of feathers. Service officials believe that the total prohibition on sales of migratory bird feathers and publicity associated with past investigations have significantly reduced the number of birds killed for their feathers.

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